

Applicants: Haller et al.
Serial No. 09/764,681
Page 13

REMARKS

Claims 1-59 pending and per the non-final Office Action claims 1-59 stand rejected. Herewith Applicants amend independent claims 1 and 29 and cancel claims 56-59 without prejudice or disclaimer as to the subject matter thereof.

Claim Ojections – 35 U.S.C. §101

Claims 1, 29 and 56 stand objected to for insufficient antecedent basis. Applicants herewith amend claims 1 and 29 to resolve said antecedent basis objection. Since claim 56 has been canceled without prejudice or disclaimer as to the subject matter thereof said objection is rendered moot.

Claim Rejections – 35 U.S.C. §112

Claim 56 stands rejected as being indefinite; however, since claim 56 stands canceled without prejudice or disclaimer as to the subject matter thereof said rejection is rendered moot.

Claim Rejections – 35 U.S.C. §101

Claims 56 and 58-59 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Since these claims are canceled herein without prejudice or disclaimer as to the subject matter thereof, this ground of rejection is rendered moot.

Claim Rejections – 35 U.S.C. §103

Claims 1-3, 5, 7, 8, 10-22, 24-26, 28-30, 32-35, 37-49, 51-53 and 55-59 are rejected under 35 U.S.C. §103(a) as being unpatentable over Smith et al. (5,456,692) in view of Nappholz et al. (5,720,770).

Claims 3, 4, and 31 stand rejected as being unpatentable over Smith in view of Nappholz et al. In further view of Bernard (5,497,339).

Applicants: Haller et al.
Serial No. 09/764,681
Page 14

Claims 9 and 36 stand rejected as being unpatentable over Smith in view of Nappholz et al. In further view of deCoriolis (5,342,408).

Claims 23 and 50 stand rejected as being unpatentable over Smith in view of Nappholz et al. In further view of Kalman (3,972,320).

Claims 27 and 54 stand rejected as being unpatentable over Smith in view of Nappholz et al. In further view of Kroll (5,258,906).

Claim 6 appears to have no *prima facie* obviousness rejection presented or applied although at the bottom of page 4 of the non-final Office Action a sentence appears (beginning with "Regarding claim 6,").

Applicants respectfully assert that the amendments to independent claims 1 and 29 patentably distinguish the presently claimed invention from the cited and applied prior art. That is, none of the art includes at least the following limitations; namely:

wherein the communication system includes means capable of performing bi-directional communication with the mobile phone and the remote computer system and wherein the remote computer system couples to at least one of: an automatic expert system adapted to render one or more suggested courses of therapeutic action, a clinician, an emergency dispatch facility.

Since claims 2-28 and 30-54 depend either directly or indirectly from one of the independent claims, they too are patentably distinct from the cited and applied art.

Double Patenting Rejection

The Examiner asserts that claims 1, 2, 29 and 56-59 stand rejected under the judicially-created doctrine of obviousness-type double patenting.

Applicants: Haller et al.
Serial No. 09/764,681
Page 15

Applicants respectfully traverse this ground of rejection for still-pending claims 1, 2 and 29 on the following grounds.

First, although initially formulated as a rejection based on a patent owned by the assignee of the instant application, Medtronic, Inc. the detailed application of the rejection reveals that the primary reference is assigned to a third party (Pacesetter, Inc.). Applicants assert that this is an improper rejection.

Second, the amendments to claims 1 and 29 tendered herewith render the purported rejection moot.

For the foregoing reasons Applicants respectfully request that the Examiner withdraw the rejection of claims 1, 2, and 29 based on the judicially-created doctrine of obviousness-type double patenting.

CONCLUSION

Applicants respectfully assert that all presently pending claims in this application are in condition for allowance. Applicants respectfully request reconsideration and prompt allowance of all pending claims so that the claimed invention may timely issue as U.S. Letters Patent. Please charge any additional fees or credit any overpayment to deposit account number 13-2546. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Respectfully submitted,

Date:

2 Dec. 04



Paul H. McDowall

Reg. 34,873

Telephone: (763) 514-3351

Customer No. 27581